

**Administrative Tribunal
Principal Bench**

OA No.3946/2016

with

OA No.2732/2017

New Delhi, this the 3rd day of October, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

I. OA No.3946/2016

Satya Prakash,
S/o Late Dr. S.P. Singh,
Aged about 55 years,
R/o Flat No.40-B, Central Revenue Apartment,
Cassimetha, ND Road,
Mumbai-400006.
Presently working as a Assistant Legal Advisor,
Directorate of Enforcement, Department of Revenue,
Ministry of Finance, Zonal Office, Mumbai.
...Applicant

(By Advocates : Shri A.K. Behera with Shri S.K. Gupta)

Versus

1. Union of India,
Through its Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001.
2. The Director,
Directorate of Enforcement,
6th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi-110003.
3. Ms. Sonali Gopalrao Badhe,
Assistant Legal Advisor,
Directorate of Enforcement,
Zonal Office, 3rd Floor,
Nanalal Chambers,
Opposite Times of India,
Ashram Road, Ahmedabad-380009.

4. Sh. Naveen Kumar B,
Assistant Legal Advisor,
Presently Deputy Director (Law),
On Deputation at
Competition Commission of India,
18-20, The Hindustan Times House,
KG Marg, Connaught Place,
Bara Khamba, New Delhi-110001.
5. Shri Siva Bharath Kumar Dabbeeru,
Assistant Legal Advisor,
Directorate of Enforcement,
House No.20, By Lane No.1,
Rajgarh Road, Zonal Office,
Guwahati-781003.
6. Sh. S.K. Batra,
Assistant Legal Advisor,
Directorate of Enforcement,
1st Floor, U.T. Govt. Press Bldg,
Madhya Marg, Sector-18,
Zonal Office, Chandigarh-160018.
7. Sh. Goutam Narayan Ghosh,
Assistant Legal Advisor,
Presently Deputy Director on Deputation at
Competition Commission of India,
18-20, The Hindustan Times House,
KG Marg, Connaught Place,
Bara Khamba, New Delhi-110001.

...Respondents

(By Advocates : Shri Gyanendra Singh and Shri Robin Mazumdar)

II. **OA No.2732/2017**

A.B. Ravvi,
Assistant Legal Advisor,
Directorate of Enforcement,
3rd Floor, Murugesu Naicker Office Complex,
Greens Road, Thousand Lights,
Chennai-600 006.

...Applicant

(By Advocates : Shri K.V. Jagdishvaran with Ms. G. Indira)

Versus

1. Union of India rep by the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110 001.
2. The Director,
Directorate of Enforcement,
6th Floor, L.N. Bhawan,
Khan Market, New Delhi-110 003.
3. The Joint Director (Admn.),
Directorate of Enforcement,
6th Floor, L.N. Bhawan,
Khan Market, New Delhi-110 003.
4. The Secretary,
Union Public Service Commission,
Shajakhan road, New Delhi-110 001.
5. The Secretary,
Department of Personnel & Training,
L.N. Bhawan, Khan Market,
New Delhi-110 003.
6. Ms. Sonali Gopalrao Badhe,
Assistant Legal Advisor,
Directorate of Enforcement,
Ahmadabad zonal office, 3rd Floor,
Nanalal Chambers, Opp. Times of India,
Ashram Road, Ahmedabad-380 009.
7. Sh. Naveen Kumar B,
Assistant Legal Advisor,
Directorate of Enforcement,
6th Floor, L.N. Bhawan, Khan Market,
New Delhi-110 003.
(presently on deputation to Competition
Commission of India, New Delhi.
8. Mr. Siva Bharath Kr. Dabbeeru,
Assistant Legal Advisor,
Directorate of Enforcement,
House No.20, Bye Lane No.1,

Rajgarh Road, Guwahati-781003.

9. Sh. Suresh Kumar Batra,
Assistant Legal Advisor,
Directorate of Enforcement,
1st Floor, U.T. Govt. Press Building,
Madhya Marg, Sector-18,
Chandigarh-160018.
10. Sh. Goutham Narayan Ghosh,
Assistant Legal Advisor,
Directorate of Enforcement,
6th Floor, L.N. Bhawan,
Khan Market, New Delhi-110 003.
(presently on deputation to Competition
Commission of India, New Delhi).
11. Mr. G. Suresh Babu,
Assistant Legal Advisor,
Directorate of Enforcement,
6th Floor, L.N. Bhawan,
Khan Market, New Delhi-110 003.
(Presently on deputation to MEPZ, Chennai).
12. Mr. Satya Prakash,
Assistant Legal Advisor,
Directorate of Enforcement,
101, Janmaboomi Chambers,
Walchand Hirachand Marg,
Mumbai-400 001.
13. Mr. Ashwini Kumar Panda,
Assistant Legal Advisor,
Directorate of Enforcement,
CGO Complex, 3rd MSO Building,
6th Floor, C&D Wing, DF Block,
Salt Lake, Sector 1, Kolkata-700 064.

...Respondents

(By Advocates : Shri Rajinder Nischal and Shri Robin
Mazumdar)

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-**

In both the OAs, common questions of facts and law are involved. Hence they are disposed of through this common judgment.

2. The Directorate of Enforcement, Ministry of Finance, had on its establishment, the posts of Assistant legal Advisor. The appointment to these posts is governed by the Directorate of Enforcement (Deputy Legal Adviser and Assistant Legal Adviser) Recruitment Rules, 1984 (for short, the Rules). According to them, 50% of the posts are required to be filled by way of deputation/transfer, failing which, by direct recruitment, and 50% exclusively through direct recruitment. In the year 2010, there were 10 vacancies. The advertisement for direct recruitment was issued by the UPSC on 10.01.2009. The advertisement for transfer/deputation was issued on 20.01.2019.

3. The UPSC selected the direct recruits and they were issued orders of appointment on 17.08.2010. The

appointments by transfer were made on 16.11.2010. The names of the applicants figured in the list of selected candidates for appointment by transfer.

4. The provisional seniority list for the post was published on 29.02.2012. The direct recruits were placed en-bloc, above the appointees on transfer. The applicants and other affected candidates submitted their objections to the provisional seniority list. The final seniority list was published on 15.01.2016, reiterating the provisional seniority list.

5. The applicants submitted a representation ventilating their grievance about the seniority. That was rejected through order dated 04.10.2016. This OA is filed challenging the order dated 04.10.2016 as well as the final seniority list dated 15.01.2016. Direction is also sought to the respondents to place the applicants above the private respondents and to extend them, the consequential benefits.

6. The applicants contend that though the process of appointment through direct recruitment as well as

appointment by transfer was initiated simultaneously, and the orders of appointment in favour of the direct recruits were issued two days earlier, the department is under obligation to maintain roster by alternating one direct recruit with one transfree, and that there was no basis for them to put the direct recruits en-bloc above the appointees by transfer. Reliance is placed upon the OM dated 11.11.2010.

7. The respondents No.1&2, on the one hand, and other private respondents, on the other, filed separate counter affidavits. According to them, the direct recruits were appointed earlier point of time, and they were entitled to be extended the benefit of seniority. It is also stated that in cases of appointment by transfer, the seniority shall invariably be reckoned from the date on which appointment takes place, and the question of fixing seniority from an earlier date does not arise. Reliance is placed upon the same OM dated 11.11.2010.

8. We heard Shri A.K. Behera, Shri S.K. Gupta and Shri K.V. Jagdishvaran, learned counsel for applicant

and Shri Gyanendra Singh, Shri Rajinder Nischal and Shri Robin Mazumdar, learned counsel for respondents.

9. The post in question is the Assistant Legal Advisor in the Directorate of Enforcement. The recruitment was against the vacancies of the year 2009-2010. There were 10 vacancies, and out of them, 5 were earmarked for direct recruitment and the remaining 5 were earmarked for appointment by deputation/transfer. In column 11, the method of appointment to the post is indicated as under :-

- “(i) 50 per cent by transfer on deputation/transfer, failing which by direct recruitment.
- (ii) 50 per cent by direct recruitment.”

10. It has already been mentioned that notification for direct recruitment was issued on 16.01.2009, whereas the one through other method of appointment, was issued on 20.01.2009. Same sequence ensued in the orders of appointment also, namely, 17.08.2010 and 16.11.2010. In the provisional seniority list published on

29.02.2012, the direct recruits were placed en-bloc above the candidates appointed through transfer.

11. It is relevant to mention here that direct recruits, the private respondents herein, filed OA No.1388/2017 before this Tribunal, challenging the very appointment of the applicants and other similarly situated candidates. The OA was dismissed on 02.11.2018. The same was confirmed in WP(C) No.3431/2019 and thereafter in SLP No.19926/2019. Having unsuccessfully questioned the legality of the appointment of the applicants herein, the private respondents made their efforts for seniority.

11. Wherever, there exist multiple sources of appointment to a post, the Recruitment Rules or the other executive orders issued in this behalf would govern the manner in which the seniority among them is to be fixed. In the absence of such rules, the general rule is that the direct recruits take precedence, and they are placed above the promotees and officers appointed through other methods. In certain cases, the roster is maintained wherein, the places are allotted to the candidates from different sources of appointment, in

such a manner that equanimity is maintained. In the absence of any roster, or even if general principle of precedence to direct recruits is ignored, the seniority list has to be guided by the dates of appointment.

12. In certain cases, the date of joining was sought to be treated as the basis, on the basis of OM dated 03.03.2008 issued by the DOP&T. The Hon'ble Supreme Court has set aside the same in **UOI & Ors. Vs. N.R. Parmar** (Civil Appeal No.7514-751/2005).

13. Another relevant principle is that within the same category, the ranking assigned in the seniority list shall decide the issue of seniority also. In the instant case, the appointment is through direct recruitment as well as by transfer/deputation. It is rather incidental that the applicant and other similarly situated candidates are appointed by way of transfer. A line needs to be added about the distinction between the appointment on deputation, on the one hand, and the appointment on transfer, on the other.

14. The appointment through deputation is a temporary phenomena, and it is for a specified period. In certain cases, a deputationist may seek absorption in the department, which borrowed him. It is only on such absorption, that he becomes a full member of that service. Till then, he continues to hold lien in the parent department. In contrast, the appointment by transfer results in a permanent shifting of an employee from one department to another. With the appointment so made, his relation with the parent department gets severed and at once, he becomes the employee of the one, in which he was appointed on transfer.

15. In case of deputation, the seniority is determined from the date of absorption. There may also be instances where the seniority of an absorbed employee may relate back to the date of deputation, in case the nature of duties, method of appointment and other similar factors exist. The judgment of the Hon'ble Supreme Court in ***S.I. Rooplal And Anr. Vs. Lt. Governor through Chief Secretary Delhi & Ors.*** (Civil Appeal No.5363-64 of 1997), provides guidance in this behalf.

16. Reverting to the fact of the case, the applicants were appointed by way of transfer. Whatever be the possibility of the seniority of a deputationist being fixed from a date earlier to the one on which he was permanently absorbed, such a possibility does not exist in case of appointment by transfer. He will be on the rolls of his parent department, till he came to be appointed in the new department. In view of this typical situation, the appointment by transfer virtually partakes the character of a direct recruitment; on this aspect. He cannot get seniority with effect from any earlier date. Therefore, the only factor that becomes relevant would be the date of order of appointment; which, admittedly, in the instant case is earlier for direct recruits.

17. The OM dated 11.11.2010 was relied upon by both the parties. It is relevant to refer to clause 3.5 therein, which reads as under :-

“3.5 **Seniority of persons who are transferred and absorbed directly without being on deputation.**”

Some cases has been received in this department seeking clarification whether the (DOP&T)

O.M.No.20020/7/80-Estt. (D) Dated 29.5.1986 and No.20011/1/2000-Estt.(D) Dated 27th March, 2001 in the case of a person who is initially taken on deputation and absorbed later, would be applicable also for persons who are transferred and absorbed directly without being on deputation i.e. where the recruitment rules provide for recruitment through absorption. The matter has been considered and it has been decided that, in such cases also the provision as contained in the afore-said O.Ms would be applicable i.e. the date he has been holding the post on deputation or the date from which he has been appointed on the regular basis to the same or equivalent grade in his parent department, whichever is earlier.”

18. From this, it becomes clear that the date on which a transferee was appointed on regular basis becomes the deciding factor. Admittedly, the applicants were appointed as Assistant Legal Advisor subsequent to the date on which the direct recruitees were appointed. The date of their joining is also much later than that.

19. Therefore, we do not find any basis to interfere with the impugned seniority list. Though reliance is placed upon clause 3.2 by the learned counsel for applicant, it is referable to the cases where the roster is maintained and

not in the absence thereof. Hence, the OAs are dismissed.

There shall be no orders as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Member (J)

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